<u>NOT</u> <u>TO</u> <u>BE</u> <u>PUBLISHED</u>

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

PARDEEP K. SINGH,	
Plaintiff and Appellant,	C085219
v.	(Super. Ct. Nos. 39201500330360CUBCSTK, STKCVUBC20150009130)
DOROTHY JEAN POLLINO,	
Defendant and Respondent.	

Pardeep Singh entered into an agreement with Dorothy Pollino to buy Pollino's house and property. Among other things, the agreement provided that if the transaction did not close by September 18, 2015, the agreement would expire. A fire subsequently destroyed Pollino's house and Singh did not pay the previously agreed-upon purchase price by the expiration date.

Singh sued for specific performance, but the trial court entered judgment for Pollino, ruling that the agreement expired under its own terms.

Singh now contends the fire establishes that Pollino breached her contractual obligation to maintain the interior of the house. She claims she showed willingness to

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perform by sensibly offering to subtract the insurance proceeds from the purchase price, or by offering to build a new house with the insurance proceeds. She argues the trial court should have ordered specific performance of the agreement. Disagreeing with Singh's arguments, we will affirm the judgment.

BACKGROUND

In 2015, Pollino owned five acres of property in Acampo, with a house on the property. Singh offered to buy the property, and Singh's brother drafted a two-page purchase agreement. The plan was for Singh to hold the property in trust for her brother. Singh and Pollino signed the agreement on May 19, 2015.

Among other things, the purchase agreement said Singh would pay $250,000 for the property, and Pollino "has and will have the right to rent the property for $500.00/month until deceased." After Pollino's death, her daughter would have the right to rent the property for five years. Singh was obligated "to maintain the property until the close of escrow" and Pollino was obligated to "maintain the interior of the house until he/she moves out."

The agreement further provided that the sale would close by, or the agreement would expire on, September 18, 2015, and that if the seller or buyer backed out of the agreement, that party was required to pay a penalty of $25,000.00 to the other party for "time wasted."

On June 26, 2015, a fire destroyed the house. It does not appear that the fire was the fault of either party. Singh approached Pollino after the fire and told her the purchase price would need to be renegotiated to move forward with the agreement. By the agreement's September 18, 2015 expiration date, Singh had not paid any portion of the purchase price and Pollino had not conveyed title to Singh.

Singh sued Pollino for specific performance, and Pollino cross-complained for declaratory relief, seeking, among other things, a declaration that the contract was extinguished due to the destruction of its subject matter.

Following trial, the trial court ruled for Pollino. It found that because Singh did not perform by the expiration date, the contract expired by its own terms. The trial court said the fact that an insurance payout may have been available was not relevant to the court's decision. As for the $25,000 penalty clause, the trial court found no such payment was owed because neither party had repudiated the contract before the September 18, 2015 expiration.

DISCUSSION

Singh argues the fire establishes that Pollino breached her contractual obligation to maintain the interior of the house. But the record is silent as to the fire's cause, and the trial court ruled there was no evidence presented that the fire was the fault of either party. Thus, the record does not establish that Pollino breached the agreement.

Singh further asserts that the trial court should have ordered specific performance of the agreement and simply deducted the amount of insurance proceeds from the purchase price, because that would give both parties the benefit of their bargain. She seeks to distinguish *Dixon v. Salvation Army* (1983) 142 Cal.App.3d 463, but the rationale in *Dixon* seems appropriate here. In that case, the court held that when parties enter into an agreement for the purchase of real property, and the property is destroyed, the parties should be placed in their original position, free to make a new bargain. (*Id*. at p. 467.) As the court explained, "[i]t would be grossly unfair to require either party to accept consideration less than the whole of what was bargained for under these circumstances. If it is unfair to force the purchaser to receive materially damaged property, it is equally unfair to compel the [seller] to accept a price substantially below what he bargained for. Although a court in equity has broad powers, it should not use its jurisdiction to remake the contract for the parties . . . ." (*Ibid.*, fn. omitted.) Here, deducting the insurance proceeds from the sale price would not have given Pollino the benefit of her bargain, because a significant part of Pollino's bargain was that she could rent the house for $500 per month for the rest of her life, and her daughter could rent it

for five years after Pollino's death. Singh argues in the alternative that the insurance proceeds could have rebuilt the house, but there is no showing that this could actually happen or that a new house would in fact provide Pollino with the full benefit of her original bargain.

What is clear from the record is that the agreement expired on September 18, 2015, a result that placed the parties in their original position, free to make a new bargain. On this record, the trial court did not err.

<div align="center">DISPOSITION</div>

The judgment is affirmed. Pollino shall recover her costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

                                        /S/
                              MAURO, Acting P. J.

We concur:

     /S/
DUARTE, J.

     /S/
RENNER, J.